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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
A32359-A 070050.1462

First named inventor: Modak

Application No.: 09/777,121

Art Unit: 3762

Filed: February 5, 2001

Examiner: Kennedy, Sharon

Title: Triclosan and Silver Compound Containing Medical Devices

Attention: Office of Petitions
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the
expiration date of the period set for reply in the Office notice or action plus an extensions of time
actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$_____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ 1330 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of Request for Continued Examination (RCE) and Terminal Disclaimer (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

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3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☒ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ 110 for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

August 20, 2004

Date



Signature

Telephone

Number: 212-408-2628

Lisa B. Kole

Typed or printed name

Baker Botts, LLP

Address

30 Rockefeller Plaza, N.Y. , N.Y. 10112

Enclosures: ☒ Fee Payment

☐ Reply

☒ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

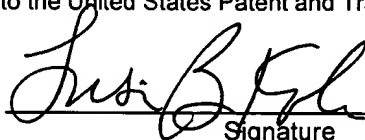
I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450 Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

August 20, 2004

Date



Signature

Lisa B. Kole

Type or printed name of person signing certificate



Atty. Docket No. A32359-A 070050.1462
PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Modak et al.
Serial No. : 09/777,121 Examiner : Kennedy, Sharon E.
Filed : February 5, 2001 Group Art Unit : 3762
For : TRICLOSAN AND SILVER COMPOUND CONTAINING MEDICAL
DEVICES

LETTER REGARDING PETITION TO REVIVE AND RESPONSE TO
DOUBLE PATENTING REJECTION

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

August 20, 2004
Date of Deposit

Lisa B. Kole
Attorney Name


Signature

35,225
PTO Registration No.

August 20, 2004
Date of Signature

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper accompanies a Petition for Revival of an Application for Patent Application Abandoned Unintentionally Under 37 C.F.R. § 1.137(b) ("Petition"). Also attached is a Request for Continued Examination ("RCE") and a Terminal Disclaimer.

It has come to the attention of the undersigned attorney that the Response After Final ("Response") mailed on June 30, 2004 was filed inadvertently without a RCE or Notice of Appeal, and that neither of these papers were filed before the deadline, July 30, 2004. Thus, the

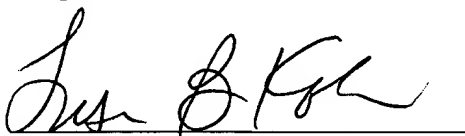
above-referenced application is abandoned as of July 30, 2004. Therefore, Applicants submit herewith a Petition, RCE and a Terminal Disclaimer, as discussed below. Applicants submit that the delay in the submission of the RCE was unintentional. The papers submitted herewith were prepared promptly after it was realized that the application had lapsed. A Notice of Abandonment dated August 11, 2004 has been issued by the Patent Office.

Double Patenting Rejection

In the Final Office Action mailed January 30, 2004, claims 22-29 have been rejected under the judicially-created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-9 of U.S. Patent No. 6,224,579 to Modak et al. The Examiner indicates that the conflicting claims are not identical, but are not allegedly patentably distinct from each other because the claims of the present application are broader than the claims of the parent patent. In response, Applicants submit herewith a terminal disclaimer. Applicants note that the filing of a disclaimer is not an admission of the propriety of the rejection of these claims. *See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991).

Applicants also submit the petition fee as set forth in 37 C.F.R. § 1.17(m). Applicants do not believe that any additional fee is required. However, should any additional fee be required, or if any overpayment has been made, the Commissioner is hereby authorized to charge any fees, or credit or any overpayments made, to Deposit Account 02-4377. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lisa B. Kole', written over a horizontal line.

Lisa B. Kole
PTO Reg. No. 35,225
Attorney for Applicants

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